

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pegasus Development 107 License)	File No. SAT-LOA-19980403-0026
Corporation)	
)	Call Sign S2351
Application for Authority to Construct, Launch,)	
And Operate a Ka-band Satellite System in the)	
Fixed-Satellite Service)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 12, 2003

Released: November 13, 2003

By the Deputy Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. In this Order, we find that Pegasus Development 107 License Corporation (Pegasus) has satisfied the milestone requirement to commence construction of its first Ka-band satellite for the 107° W.L. orbital location with respect to its Ka-band frequencies. We also find that Pegasus is not constructing inter-satellite links (ISLs) on its first Ka-band satellite and thus cancel the ISL portion of its authorization.

II. BACKGROUND

2. In August 2001, the International Bureau authorized Pegasus Development Corporation to launch and operate a geostationary-satellite orbit (GSO) satellite system to provide Fixed-Satellite Service using ten satellites at five orbital locations: 117° W.L., 107° W.L., 43° W.L., 28° E.L., and 107.5° E.L.¹ The Bureau also authorized Pegasus to use ISLs to provide connectivity between the coverage regions of the different satellite orbit locations.² The authorization required Pegasus to meet explicit deadlines or milestones for system implementation, including the requirement to commence construction of its first satellite by August 2002.³

3. To determine whether Pegasus complied with its first milestone, the Satellite Division,

¹ Pegasus Development Corporation, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, 16 FCC Rcd 14378 (Int'l Bur. 2001). Pegasus Development 107 Licensee Corporation is wholly owned subsidiary of Pegasus Development Corporation.

² Specifically, Pegasus was authorized to use 2000 MHz of spectrum within the 65.0-71.0 GHz band to conduct ISL operations.

³ In July 2003, Pegasus surrendered its authorization to launch and operate Ka-band satellites at the 43° W, 28° E.L. and 107.5° E.L. orbital locations. Letter to Marlene H. Dortch from Bruce D. Jacobs, Counsel for Pegasus Development Corporation dated July 8, 2003.

International Bureau, directed Pegasus to submit a copy of an executed contract verifying that construction of its first satellite had commenced and that the satellite will be built within the time frame specified in its license.⁴ In response Pegasus submitted a copy of an executed construction contract entered into with Loral Space Systems/Loral. The contract, however, did not cover the construction or operation of ISLs. Consequently, the Satellite Division submitted a further request for information regarding whether Pegasus would be using ISLs on its satellite. In response, Pegasus stated it had not contracted for ISLs on its first satellite and that its objective with its first satellite is to launch a competitive service within the time frame specified in its authorization⁵ Pegasus explains that it made several design tradeoffs, including its decision not to use ISLs, in order to achieve a timely launch with the lowest possible risk.⁶ Pegasus asserts that the presence of ISLs is not material to the operation of its system or the services it proposes to provide.⁷

III. DISCUSSION

4. It is long-standing Commission policy to impose mandatory construction commencement milestones upon licensees in the fixed-satellite service.⁸ The milestone schedule included in each authorization is designed to ensure that licensed entities are proceeding with construction and will launch and operate in a timely manner. Requiring licensees to adhere strictly to a milestone schedule prevents orbital locations from being ‘warehoused’ by licensees to the exclusion of qualified entities that are prepared to implement systems expeditiously.⁹ Moreover, the Commission has consistently required licensees to execute non-contingent satellite construction contracts in order to meet their construction commencement milestones.¹⁰ Because it is manifestly in the public interest to ensure that licensees proceed expeditiously in completing construction of their systems and commencing service, the Commission has strictly enforced its milestone schedules and has rendered licenses null and void when the licensee has failed to commence construction.¹¹

5. In its response for additional information, Pegasus asserts that it has fully complied with its milestone requirement, despite its decision not to contract for ISLs on its first satellite.¹² We find that

⁴Letter from Fern Jarmulnek, Deputy Chief, Satellite Division, to Bruce D. Jacobs and Tony Lin, Counsel for Pegasus Development Corporation (December 12, 2002).

⁵ *Id.*

⁶ *Id.*

⁷ Letter to Marlene H. Dortch, Secretary, FCC from John K. Hane, Senior Vice President, Pegasus Communications (December 20, 2002) (Pegasus Response). Pegasus also indicated its intent to file an application requesting authority to make minor modifications to its satellite, including its decision not to employ ISLs. This application, filed March 21, 2003, requested technical changes to conform its license for the 107° W.L. orbital location to the design specified in its construction contract and requested to relinquish its authority to operate ISLs for the satellite at 107° W.L. This application was grant stamped, with conditions, concurrent with the release of this order. Pegasus Development 107 License Corporation, Application for Minor Modification, File No. SAT-MOD-20030324-00055, grant stamped by Jennifer M. Gilsonan, Chief, Policy Branch, November 13, 2003. (*Pegasus Modification Application*).

⁸ See, e.g., Norris Satellite Communications, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 22299 (1997).

⁹ MCI Communications Corporation, *Memorandum Opinion and Order*, 2 FCC Rcd 233 (CCB 1987).

¹⁰ Norris Satellite Communications, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 22299 (1997).

¹¹ See, e.g. National Exchange Satellite, Inc., *Memorandum Opinion and Order*, 8 FCC Rcd 636 (1993); Advanced Communications Corporation, *Memorandum Opinion and Order*, 10 FCC Rcd 13337 (Int’l Bur. 1995). See also Mobile Communications Holdings, Inc. *Memorandum Opinion and Order*, 17 FCC Rcd 11898 (Int’l Bur. 2002).

¹² See Pegasus response at 2.

the contract entered into by Pegasus satisfies Pegasus's construction commencement milestone for the 107° W.L. orbital location with respect to its authorized Ka-band frequencies. The contract submitted by Pegasus does not cover the construction and operation of ISLs and Pegasus has confirmed that it will not implement ISLs on this satellite.¹³

6. The Bureau has stated that "the execution of a contract that does not provide for complete construction of the satellites by the milestone deadline cannot satisfy a construction-commencement milestone requirement."¹⁴ Pegasus's contract did not provide for ISLs and therefore did not provide for "complete" construction of the satellite as authorized. Nevertheless, we find that declaring Pegasus's entire Ka-band license null and void for failure to incorporate an ancillary package would not advance the purpose of our milestone policy. As the Bureau recently held, ISLs, unlike Ka-band service links, are not necessary in this case to provide Ka-band service to the end user.¹⁵ ISLs provide communications between in-orbit satellites. These communications can also be accomplished by linking the satellites through an intermediate earth station. Thus, ISLs provide merely an alternative method of completing the transmission link and are not an integral part of its Ka-band system. Consequently, it is consistent with our milestone policy to cancel its ISL authorization while determining that Pegasus has satisfied its milestone to commence construction of its first satellite.

IV. CONCLUSION AND ORDERING CLAUSES

7. We find that Pegasus met its construction commencement milestone for its first Ka-band satellite at the 107° W.L. orbital location with respect to its Ka-band frequencies and declare its authorization to use inter-satellite links null and void.

8. Accordingly, IT IS ORDERED that, pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, the authorization of Pegasus Development 107 License Corporation, File No. SAT-LOA-19980403-0026 (Call Sign S2351) to use the 69.0-70.0 GHz band for inter-satellite links IS CANCELLED.

9. This order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Fern J. Jarmulnek
Deputy Chief
Satellite Division
International Bureau

¹³ *Pegasus Modification Application*.

¹⁴ See, e.g., Globalstar, L.P., for Modification of License for a Mobile – Satellite Service System in the 2 GHz Band for Waiver and Modification of Implementation Milestones for 2 GHz MSS Systems, *Memorandum Opinion and Order*, 18 FCC Rcd 1249 (2003) and Mobile Communications Holdings, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 11898 (2002). See also Morning Star Satellite Company, LLC, *Memorandum Opinion and Order*, 16 FCC Rcd 11550 (2001) at ¶ 5.

¹⁵ KaStarCom. World Satellite, LLC, *Memorandum Opinion and Order*, DA 03-3428 (rel. October 27, 2003).